

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANIEL O'NEILL,

Plaintiff,

v.

No. CIV 11-0858 JB/GBW

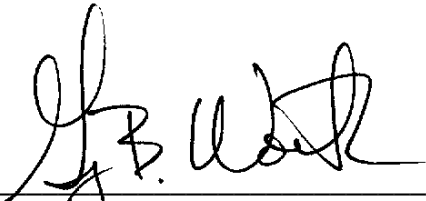
FORMER DICTATOR AND
WARDEN LAWRENCE JARAMILLO, ET AL.,

Defendant.

ORDER

This matter is before the court on Plaintiff's Motion For Default Judgment (Doc. 44) filed on April 24, 2012, against Defendant Jaramillo. At the time the motion was filed, Defendant Jaramillo had not been served in this action.¹ The Court may not properly enter default judgment against a defendant unless service has been effected, waived, or accepted. *See, e.g., Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 941 (10th Cir. 1987); *Texas Western Financial Corp. v. Edwards*, 797 F.2d 902, 905 (10th Cir. 1986). "[A]n entry of default against [a defendant], before it had any obligation to file an answer, would have been incorrect as a matter of law." *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003). The motion will be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion For Default Judgment (Doc. 44) is DENIED.



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE

¹ Defendant Jaramillo has since been served and has answered. *See doc. 51.*